

(B) joint and several liability—

(i) among all cigarette manufacturers for surcharges imposed under paragraph (2); and

(ii) among all smokeless tobacco manufacturers for surcharges imposed under paragraph (3).

(5) **SURCHARGE LIABILITY AMONG MANUFACTURERS.**—A tobacco product manufacturer shall be liable under this subsection to one or more other manufacturers if the plaintiff tobacco product manufacturer establishes by a preponderance of the evidence that the defendant tobacco product manufacturer, through its acts or omissions, was responsible for a disproportionate share of the non-attainment surcharge as compared to the responsibility of the plaintiff manufacturer.

(6) **EXEMPTIONS FOR SMALL MANUFACTURERS.**—

(A) **ALLOCATION BY MARKET SHARE.**—The Secretary shall allocate the assessments under this subsection according to each manufacturer's share of the domestic cigarette or domestic smokeless tobacco market, as appropriate, in the year for which the surcharge is being assessed, based on actual Federal excise tax payments.

(B) **EXEMPTION.**—In any year in which a surcharge is being assessed, the Secretary shall exempt from payment any tobacco product manufacturer with less than 1 percent of the domestic market share for a specific category of tobacco product unless the Secretary finds that the manufacturer's products are used by underage individuals at a rate equal to or greater than the manufacturer's total market share for the type of tobacco product.

(C) **MANUFACTURER-SPECIFIC SURCHARGES.**—

(1) **IN GENERAL.**—If the Secretary determines that the required percentage reduction in use of a type of tobacco product has not been achieved by a manufacturer for a year, the Secretary shall impose a surcharge on such manufacturer under this paragraph.

(2) **CIGARETTES.**—For each calendar year in which a cigarette manufacturer fails to achieve the performance objective under section 204(c), the Secretary shall assess a surcharge on that manufacturer in an amount equal to the manufacturer's share of youth incidence for cigarettes multiplied by the following surcharge level:

If the non-attainment percentage for the manufacturer is:	The surcharge level is:
Not more than 5 percentage points	\$80,000,000 multiplied by the non-attainment percentage
More than 5 but not more than 24.1 percentage points	\$400,000,000, plus \$240,000,000 multiplied by the non-attainment percentage in excess of 5 but not in excess of 24.1 percentage points
More than 24.1 percentage points	\$5,000,000,000

(3) **SMOKELESS TOBACCO.**—For each calendar year in which a smokeless tobacco product manufacturer fails to achieve the performance objective under section 204(c), the Secretary shall assess a surcharge on that manufacturer in an amount equal to the manufacturer's share of youth incidence for smokeless tobacco products multiplied by the following surcharge level:

If the non-attainment percentage for the manufacturer is:	The surcharge level is:
Not more than 5 percentage points	\$8,000,000 multiplied by the non-attainment percentage
More than 5 but not more than 24.1 percentage points	\$40,000,000, plus \$24,000,000 multiplied by the non-attainment percentage in excess of 5 but not in excess of 24.1 percentage points
More than 24.1 percentage points	\$500,000,000

(4) **MANUFACTURER'S SHARE OF YOUTH INCIDENCE.**—For purposes of this subsection, the term "manufacturer's share of youth incidence" means—

(A) for cigarettes, the percentage of all youth smokers determined to have used that manufacturer's cigarettes; and

(B) for smokeless tobacco products, the percentage of all youth users of smokeless tobacco products determined to have used that manufacturer's smokeless tobacco products.

(5) **DE MINIMIS LEVELS.**—If a manufacturer is a new manufacturer or the manufacturer's baseline level for a type of tobacco product is less than the de minimis level, the non-attainment percentage (for purposes of paragraph (2) or (3)) shall be equal to the number of percentage points by which the percentage of children who used the manufacturer's tobacco products of the applicable type exceeds the de minimis level.

(d) **SURCHARGES TO BE ADJUSTED FOR INFLATION.**—

(1) **IN GENERAL.**—Beginning with the fourth calendar year after the date of enactment of this Act, each dollar amount in the tables in subsections (b)(2), (b)(3), (c)(2), and (c)(3) shall be increased by the inflation adjustment.

(2) **INFLATION ADJUSTMENT.**—For purposes of paragraph (1), the inflation adjustment for any calendar year is the percentage (if any) by which—

(A) the CPI for the preceding calendar year; exceeds

(B) the CPI for the calendar year 1998.

(3) **CPI.**—For purposes of paragraph (2), the CPI for any calendar year is the average of the Consumer Price Index for all-urban consumers published by the Department of Labor.

(4) **ROUNDING.**—If any increase determined under paragraph (1) is not a multiple of \$1,000, the increase shall be rounded to the nearest multiple of \$1,000.

(e) **METHOD OF SURCHARGE ASSESSMENT.**—The Secretary shall assess a surcharge for a specific calendar year on or before May 1 of the subsequent calendar year. Surcharge payments shall be paid on or before July 1 of the year in which they are assessed. The Secretary may establish, by regulation, interest at a rate up to 3 times the prevailing prime rate at the time the surcharge is assessed, and additional charges in an amount up to 3 times the surcharge, for late payment of the surcharge.

(f) **BUSINESS EXPENSE DEDUCTION.**—In order to maximize the financial deterrent effect of the assessments and surcharges established in this section, any such payment shall not be deductible as an ordinary and necessary business expense or otherwise under the Internal Revenue Code of 1986.

(g) **PROCEDURES.**—In assessing price increase assessments and enforcing other measures under this section, the Secretary shall have in place procedures to take into account the effect that the margin of error of the annual performance survey may have on the amounts assessed to or measures required of such manufacturers.

(h) **OTHER PRODUCTS.**—The Secretary shall promulgate regulations establishing performance objectives for the reduction of the use by children of other products made or derived from tobacco and intended for human consumption if significant percentages of children use or begin to use such products and the inclusion of such products as types of tobacco products under this subtitle would help protect the public health. Such regulations shall contain provisions, consistent with the provisions in this subtitle applicable to cigarettes and smokeless tobacco, for the application of assessments and surcharges to achieve reductions in the percentage of children who use such products.

(i) **APPEAL RIGHTS.**—The amount of any surcharge is committed to the sound discretion of the Secretary and shall be subject to judicial review by the United States Court of Appeals for the District of Columbia Circuit, based on the arbitrary and capricious standard of section 706(2)(A) of title 5, United States Code. Notwithstanding any other provisions of law, no court shall have authority to stay any surcharge payments due the Secretary under this Act pending judicial review.

(j) **RESPONSIBILITY FOR AGENTS.**—In any action brought under this subsection, a tobacco product manufacturer shall be held responsible for any act or omission of its attorneys, advertising agencies, or other agents that contributed to that manufacturer's responsibility for the surcharge assessed under this section.

## SEC. 206. DEFINITIONS.

In this subtitle:

(1) **CHILDREN.**—The term "children" means individuals who are 12 years of age or older and under the age of 18.

(2) **CIGARETTE MANUFACTURERS.**—The term "cigarette manufacturers" means manufacturers of cigarettes sold in the United States.

(3) **EXISTING MANUFACTURER.**—The term "existing manufacturer" means a manufacturer which manufactured a tobacco product on or before the date of the enactment of this title.

(4) **NEW MANUFACTURER.**—The term "new manufacturer" means a manufacturer which begins to manufacture a type of tobacco product after the date of the enactment of this title.

(5) **NON-ATTAINMENT PERCENTAGE.**—The term "non-attainment percentage" means the number of percentage points yielded—

(A) for a calendar year in which the percent incidence of underage use of the applicable type of tobacco product is less than the baseline level, by subtracting—

(i) the percentage by which the percent incidence of underage use of the applicable type of tobacco product in that year is less than the baseline level, from

(ii) the required percentage reduction applicable in that year; and

(B) for a calendar year in which the percent incidence of underage use of the applicable type of tobacco product is greater than the baseline level, adding—

(i) the percentage by which the percent incidence of underage use of the applicable type of tobacco product in that year is greater than the baseline level; and

(ii) the required percentage reduction applicable in that year.

(6) **SMOKELESS TOBACCO PRODUCT MANUFACTURERS.**—The term "smokeless tobacco product manufacturers" means manufacturers of smokeless tobacco products sold in the United States.

## NOTICES OF HEARINGS

### COMMITTEE ON INDIAN AFFAIRS

Mr. CAMPBELL. Mr. President, I would like to announce that the Senate Committee on Indian Affairs will meet in open session of the Senate on Wednesday, June 10, 1998, beginning at 9:30 a.m. to conduct an oversight hearing on Bureau of Indian Affairs School Construction. The hearing will be held in room 106 of the Dirksen Senate Office Building. Those wishing additional information should contact the Committee on Indian Affairs at (202) 224-2251.

COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY

Mr. LUGAR. Mr. President, I would like to announce that the Senate Committee on Agriculture, Nutrition, and Forestry will meet on Wednesday, June 10, 1998 at 2 p.m. in SR-328A. The purpose of this meeting will be to examine livestock issues.

SUBCOMMITTEE ON EMPLOYMENT AND TRAINING

Mr. JEFFORDS. Mr. President, I would like to announce for information of the Senate and the public that a hearing of the Subcommittee on Employment and Training, Senate Committee on Labor and Human Resources will be held on Thursday, June 11, 1998, 9:30 a.m., in SD-430 of the Senate Dirksen Building. The subject of the hearing is Child Labor. For further information, please call the committee, (202) 224-5375.

SUBCOMMITTEE ON WATER AND POWER

Mr. KYL. Mr. President, I would like to announce for the public that a hearing has been scheduled before the Subcommittee on Water and Power of the Committee on Energy and Natural Resources.

The hearing will take place on Tuesday, June 16, 1998, at 2:30 p.m. in room SD-366 of the Dirksen Senate Office Building.

The purpose of the hearing is to receive testimony on the following measures:

S. 1398, the "Irrigation Project Contract Extension Act of 1997";

S. 2041, a bill to amend the Reclamation Wastewater and Groundwater Study and Facilities Act to authorize the Secretary of the Interior to participate in the design, planning, and construction of the Willow Lake Natural Treatment System Project for the reclamation and reuse of water, and for other purposes;

S. 2087, the "Wellton-Mohawk Title Transfer Act of 1998";

S. 2140, a bill to amend the Reclamation Projects Authorization and Adjustment Act of 1992 to authorize the Secretary of the Interior to participate in the design, planning, and construction of the Denver Water Reuse project;

S. 2142, the "Pine River Project Conveyance Act";

H.R. 2165, an act to extend the deadline under the Federal Power Act applicable to the construction of FERC Project Number 3862 in the State of Iowa, and for other purposes;

H.R. 2217, an act to extend the deadline under the Federal Power Act applicable to the construction of FERC Project Number 9248 in the State of Colorado, and for other purposes; and

H.R. 2841, an act to extend the time required for the construction of a hydroelectric project.

Persons wishing to testify or who wish to submit written testimony should write to the Subcommittee on Water and Power, Committee on Energy and Natural Resources, United States Senate, Washington, D.C. 20510. For further information concerning the

hearing, please contact James Beirne, counsel to the Subcommittee at (202) 224-2564 or Betty Nevitt, Staff Assistant at (202) 224-0765.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON ARMED SERVICES

Mr. COVERDELL. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet in Executive session during the session of the Senate on Tuesday, June 9, 1998 at 3:30 p.m. to consider possible amendments relating to Bosnia.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

Mr. COVERDELL. Mr. President, I ask unanimous consent that the Committee on Banking, Housing, and Urban Affairs be authorized to meet during the session of the Senate on Tuesday, June 9, 1998, to conduct a hearing of the following nominees: Rebecca M. Blank, of Illinois, to be a member of the Council of Economic Advisors; Michael J. Copps, of Virginia, to be the Assistant Secretary of Commerce for Trade Development; and Awilda R. Marquez, of Maryland, to be Assistant Secretary of Commerce and Director General of the United States and Foreign Commercial Service.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON FOREIGN RELATIONS

Mr. COVERDELL. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Tuesday, June 9, 1998 at 10:30 a.m. to hold a hearing.

The PRESIDING OFFICER. Without objection, it is so ordered.

ADDITIONAL STATEMENTS

UNIVERSITY OF MARYLAND WOMEN'S LACROSSE TEAM

• Ms. MIKULSKI. Mr. president, I rise today to congratulate the University of Maryland women's lacrosse team on winning their fourth consecutive national championship by beating the number one-ranked University of Virginia, 11-5. Simply put, this is unprecedented in the history of women's lacrosse. The Maryland women's lacrosse team is the only team in NCAA Division I history to accomplish this remarkable feat. As the Senator for Maryland, I couldn't be more proud.

Because lacrosse is the unofficial state sport of Maryland, the Terrapins' championship is especially sweet for people in my home state. You see, in Maryland, we love our lacrosse, and it seems like the Maryland women's lacrosse team always comes through for us. This year, Maryland made its 15th ninth consecutive NCAA Final Four

appearance, advanced to the championship game for the fifth consecutive year, played its record-setting 29th tournament game, won its record-setting 21st tournament game, won its fifth national championship in the last seven years, and won its record-setting 21st tournament game, won its fifth national championship in the last seven years, and won its seventh national championship overall.

Five Terps were named to the NCAA All-Tournament team, including College Lacrosse USA Division I Woman Player of the Year Sascha Newmarch, Kathleen Lund, Alex Kahoe, Tonia Porras, and Cathy Nelson, who was honored as the tournament MVP. The Terps were led by head coach Cindy Timchal, who has a 203-51 career record and is the third-winningest coach in women's lacrosse history. Too often, women's sports go unnoticed. However, every single member of this fabulous team deserves to be recognized—not only for their championship, but for exemplifying what college athletics are all about.

Mr. President, I'm sure you can see why Maryland is so proud of its Terrapins. Like so many lacrosse fans in my home state, I can't wait until next season. •

HAMPTON HIGH SCHOOL OF ALLISON PARK PENNSYLVANIA

• Mr. SANTORUM. Mr. President, on May 2 through May 4, 1998, more than 1200 students from across the nation came to Washington, DC, to compete in the national finals of the "We the People. . . The Citizens and the Constitution" program. I am proud to announce that the class from Hampton High School of Allison Park represented Pennsylvania. These young scholars worked diligently to reach the national finals by winning local competitions in Pennsylvania, and ultimately won the Northeastern States Regional Award.

The distinguished members of the class representing Pennsylvania were: Angela Ambrose, Rebecca Amrhein, Aren Bierkan, Christine Brady, Heather Gahagan, Emily Huie, Jessica Kiefer, Lauren Klemens, Jessica Lin, Rina Mansukhani, Lauren Montgomery, Laura Ostapenko, Andrew Scharff, Christian Spearline, Courtney Vetter and Katrina Werger.

I would also like to recognize their teacher, Mrs. Tara O'Brien, who deserves much credit for the success of the class. The district coordinator, Ms. Jennie-Lynn Knox, and the state coordinator, Ms. Christine Crist, also contributed much time and effort to help the class reach the national finals.

The "We the People. . . The Citizen and the Constitution" program is the most extensive educational program in the country developed specifically to educate young people about the Constitution and the Bill of Rights. The three day national competition simulates a congressional hearing whereby students are given the opportunity to